

17

CONSUMER RIGHTS WHEN CONSTRUCTING OR REPAIRING YOUR HOME

§ 17. 1. Introduction

This consumer rights chapter provides information on how you can enforce your rights when constructing or repairing your home. It contains the following sections:

§ 17. 2. **Repairing Your Home**

§ 17. 3. **Partially Performed Work**

§ 17. 4. **Poor Or Improper Work**

§ 17. 5. **Statewide Building and Energy Code**

§ 17. 6. **Work Never Performed**

§ 17. 7. **Specific Steps For Plumbing Complaints, Septic Complaints And Electrical Complaints**

§ 17. 8. **Door-To-Door Sales**

§ 17. 9. **Required Home Construction Contract**

§ 17. 10. **Liens On Your Home**

§ 17. 11. **Home Equity Loans**

§ 17. 2. Repairing Your Home

If you are dissatisfied with the construction or repair of your home or property, your contract may have been breached¹ and you may have legal remedies against the person or business who agreed to perform the repairs. You do not need to have a written contract in order to exercise these rights. However, we strongly recommend that you put your repair agreement into writing. The contract should be signed by both parties and state exactly what is to be done, the price to be paid, the date by which work is to start and when it is to be completed. ***Always have a signed contract before you let the contractor begin work. If the home construction or repair contract is for more than \$3,000², the Maine Home Construction Contracts Act (10 M.R.S.A. §§ 1486-1490) requires you to use a written contract with certain provisions, including an express warranty of good workmanship***

¹ It can be a breach of the implied warranty of good workmanship to not perform construction work in a “reasonably skillful” manner. *See Wimmer v. Down East Properties, Inc.*, 406 A.2d 89 (Me. 1979). There is an implied warranty of habitability when a builder sells a new home but *not* when a homeowner sells his residence. *Compare Banville v. Huckins*, 407 A.2d 294 (Me. 1979) with *Stevens v. Bouchard*, 532 A.2d 1028 (Me. 1987) (private seller’s silence concerning leaking roof not actionable as *caveat emptor* applies).

² Effective September 13, 2003, this amount was increased from \$1,400.

(see § 17.8 and Chapter 18). Violation of this written contract requirement is *prima facie* evidence of an unfair trade practice (5 M.R.S.A. § 207).

Home repair problems usually fall into three categories:

- A. The work was done correctly for the most part, but some parts or details were not done correctly or were not done at all.
- B. The work was done very poorly or incorrectly all the way around.
- C. The work was never performed.

A consumer who was not the original purchaser of the home may still have express or implied warranty claims or an unfair trade practice claim against the original builder or supplier. The Home Construction Contract Act at 10 M.R.S.A. § 1487(7) specifically creates an express warranty of workmanship and incorporates Maine Uniform Commercial Code warranty remedies, which do not require privity.³

§ 17.3. Partially Performed Work

If the work was *partially performed* and most of it was satisfactory but some parts or details were not done correctly or perhaps not done at all, you have a few choices of remedies. First, you should write a letter to the contractor, keeping a copy for yourself, that describes all of the work that the contractor agreed to perform but failed to do, or failed to do correctly. Ask the contractor to respond to you within ten days telling you when the work will be finished. The contractor should complete the work within a reasonable period of time after your demand. We believe 10 to 30 days to be reasonable in most cases.

If the contractor does not respond to your letter, or responds by saying that he or she does not intend to do any more work, you are free to seek help from other sources to finish the work. You can then sue the contractor for your damages.⁴ These are the general steps you should take in preparing your case:

- A. Try to obtain an independent opinion of the quality of work. This opinion should be in writing. The first person you should contact is a local Code Enforcement Officer, if your municipality has one.
- B. You can also obtain opinions from other contractors. These opinions should be in writing and contain estimates of the cost of properly completing the work.

³ See 11 M.R.S.A. § 2-318; *Oceanside at Pine Point v. Peachtree*, 659 A. 2d 267, 271 (Me. 1995) (purchasers of condominium constructed with defective windows may have implied warranty rights against manufacturer of defective windows).

⁴ See *Anuszewski v. Jurevic*, 566 A.2d 742, 743 (Me. 1989). In this case the Maine Law Court fully described the correct measure of damages in defective construction work cases:

The purpose of contract damages is to place the injured parties in the position they would have been in but for the breach, by awarding the value of the promised performance. See *Forbes v. Wells Beach Casino, Inc.*, 409 A.2d 646, 654 (Me. 1979); Restatement (Second) of Contracts § 344(a), at 102-03 (1981). Those damages for breach of a construction contract are measured by either the difference in value between the performance promised and the performance rendered, or the amount reasonably required to remedy the defect. *Parsons v. Beaulieu*, 429 A.2d 214, 217 (Me. 1981). The amount reasonably required to remedy the defect may be measured by the actual cost of necessary repairs. *Id.*; *Wimmer v. Down East Properties, Inc.*, 406 A.2d 88, 92 (Me. 1979). Those costs may be proven by the presentation of expert testimony as the Jurevics did here. *Gosselin v. Better Homes, Inc.*, 256 A.2d 629, 639 (Me. 1969).

In a recent case, the Maine Law Court suggested the injured homeowner could receive not only the cost of repairs, but also damages reflecting the diminution in the value of the home. See *Marchesseault v. Jackson*, 611 A.2d 95, 98-99 (Me. 1992) (faulty foundation diminished value of the house). The court also mentioned that the homeowner has a duty to use reasonable efforts to mitigate damages. *Id.* at 99.

- C. In general, you should compile comprehensive written documentation of your claim, including:
- (1) copies of all contracts, agreements, plans and communications;
 - (2) photographs, if available;
 - (3) a written chronological statement detailing every step from the day you contracted for the work to be done.

It is extremely important that all relevant communications be done in writing. *See* § 17.6 below for specific instructions on how to proceed in plumbing complaints, septic complaints and electrical complaints.

Your own best protection against unfinished work or unpaid subcontractors is a “completion bond,” which is available to reputable contractors at a reasonable price.

If you believe your claim is for less than \$6,000, you can sue the original contractor in Small Claims Court. If the cost of completing the work is more than \$6,000⁵, you will need to consult your own lawyer about bringing a lawsuit. If the contractor violated the Maine Home Construction Contracts Law (10 M.R.S.A. §§ 1486-90), which requires a written contract, you may have been the victim of an unfair trade practice and entitled to your reasonable damages⁶ and attorney’s fees (*see below* § 17.8).

§ 17. 4. Poor Or Improper Work

If the work was very poorly or improperly done⁷ or the materials used were defective,⁸ your recourse is much the same as just described for partially performed work. You should certainly consider having one or two qualified contractors inspect the work early on to give you their opinion, in writing, of both the *value* of the work performed and the *cost* of correcting it. You can sue the original contractor for the difference between what you paid and the value (if any) of the work done, plus the amount of money it will take to correct the defective work. You should write to the contractor before taking legal action, explaining where the contractor went wrong and demanding the return of the money now owed to you.

⁵ What if your total claim is for more than \$6,000, can you still file your case in Small Claims Court? Yes. Let’s imagine that you hired a contractor to build you a new home and you feel you are a victim of poor workmanship. You’ve determined your damages total \$7,500 and are as follows: \$4,000 to repair a roof that leaks, \$2,000 for insulation the contractor failed to install, and \$1,500 to repair the new driveway which has developed sinkholes. You can still go to Small Claims Court and seek damages of up to \$6,000. If your law suit is successful you’d have enough to repair the roof and the installation but not the driveway. But can you sue the contractor later for the poorly constructed driveway? No. You only get one bite at the repair apple. *See* 14 M.R.S.A. §7485.

⁶ Even if a court concludes your contractor owes you damages for breach of contract, the court may also award the contractor compensation for the reasonable value of work adequately performed that was requested by the homeowner (*quantum meruit*). *See Parker v. Ayre*, 612 A. 2d 1283 (Me. 1992) (after violating Home Construction Act, builder damages were limited to the value of the work already completed (*quantum meruit*); *Elmer Associates, Inc. v. Paquet*, No. CV-88-1502 (Me. Super. Ct., Cum. Cty., Sept. 12, 1990); Restatement (Second) of Restitution § 140; Restatement (Second) of Contracts § 197.

⁷ Very poor or improper work can be an unfair trade practice violation (5 MRSA § 207). *See State of Maine v. Frederick Weinschenk, et al*, No. CV-00-244 (Me. Superior Ct., Kenn. Cty., Dec. 23, 2002).

⁸ *See William Mushero, Inc. v. Hull*, 667 A.2d 853, 855 (Me. 1995) (amounts expended by homeowner to correct contractor’s defective performance can constitute damages resulting from violation of Maine Unfair Trade Practices Act); *Masure v. Donnelly*, 926 F.2d 128, 132-33 (1st Cir. 1992) (builder violated Maine Unfair Trade Practices Act when he knowingly sold purchasers a home with serious defects unlikely to be completely detected before sale and then failed to respond to requests for corrective measures); *Sylvain v. Masonite Corporation*, 471 A.2d 1039 (Me. 1984) (house siding was defective and breached the implied warranty of merchantability).

If the contractor's work has been of very poor quality, you do *not* have to let the contractor return to try to fix it. The contractor may only make matters worse. This is an *important* difference between partial performance where the work done was of acceptable quality, and very poor performance where the work done was not of acceptable quality. If the work was acceptable, the contractor has the right to come back and finish it within a reasonable time. If the work was unacceptable, you do not have to have the contractor back. The quality of the work is best judged by a good, independent contractor, *not* by you. The legal standard of acceptable quality considers the quality of work generally accepted by others in your area who do the same type of repairs. You will need this independent opinion to win in court. You may also want to take pictures to use in court.

Please remember, if the contractor is simply following your ill-conceived orders, you may well be responsible for poor results.⁹

§ 17. 5. **Statewide Building and Energy Code**

As of December 1, 2010 almost all Maine home construction must meet the standards set by the Maine Uniform Building and Energy Code (MUBEC) (10 MRSA §§ 9721-9725). This means developers and builders need to make certain their plans and specifications are compliant with the MUBEC provisions. If you are hiring a contractor to do home construction or repair work you should insist that the written contract include a statement that ensures the work will be done in accordance with the MUBEC provisions. *See* the model Home Construction contract in Chapter 18. Local codes will remain in effect until the MUBEC is adopted.

If you think your home contractor performed sub-standard work then you should review the construction standards of the MUBEC and be ready to explain to the contractor why you think the work needs to be done over. Your first source for MUBEC information is your local Code Enforcement Officer. Also, the Department of Public Safety can provide you with the Code's requirements. Go to www.maine.gov/dps/bbcs.

Enforcement is being accomplished in a phased approach:

- A. All municipalities with over 4,000 persons are required to enforce the MUBEC as of July 1, 2012.
- B. Municipalities with less than 4000 persons are not required to adopt the MUBEC.

Exceptions to this new statewide building code are (1) log homes, (2) manufactured housing, and (3) post and beam or timber frame construction.

§ 17. 6. **Work Never Performed**

If the work was *never performed*, or several days have passed beyond the agreed starting date, you can cancel your agreement altogether, regardless of whether it was a written or spoken agreement. If you paid money down, you are entitled to receive it all back.¹⁰ You should send the contractor a letter stating that you want your money back. Keep a copy of the letter for yourself. Give the contractor a reasonable time to respond. Two weeks is reasonable; a month is generous. If the contractor does not return your money, you can file a claim against him for the amount you paid him. You can sue for up to \$6,000 in Small Claims Court. *See* Chapter 27 in this Guide. You do not need a lawyer, you can

⁹ *F. A. Gray, Inc. v. Weiss*, 519 A.2d 716, 717 (Me. 1986).

¹⁰ *See State of Maine v. Al Verdone*, No. CV-01-452 (Cum. Cty. Super. Ct., July 15, 2002) (contractor ordered to pay \$54,323 restitution and \$45,000 civil penalty for failing to perform work that was paid for, shoddy workmanship, and failing to provide proper written contracts).

represent yourself by explaining to the judge just what happened.

§ 17. 7. Specific Steps For Plumbing Complaints, Septic Complaints And Electrical Complaints

Plumbing work, septic work and electrical work are regulated to some extent by the State of Maine. Therefore, if you have a complaint concerning one of these areas, you should take the following specific steps:

A. Plumbing Complaints

- (1) Contact the business and try to work out a resolution of your complaint;
- (2) If the business does not satisfy your complaint, contact the Code Enforcement Officer, if your municipality has one, and obtain a written opinion as to the quality of the plumbing;
- (3) Contact the State Plumbers' Examining Board (207-624-8603) and seek an inspection and written opinion;
- (4) Contact other contractors and receive written estimates for any further necessary work.

B. Septic Complaints

- (1) Contact the business and try to work out a resolution of your complaint;
- (2) Obtain the certified Site Evaluation Plan for your septic work;
- (3) Contact the Code Enforcement Officer, if your municipality has one, and obtain a written opinion as to the quality of your work;
- (4) Contact other contractors and receive written estimates for any necessary further work.

C. Electrical Complaints

- (1) Contact the business and try to work out a resolution of your complaint;
- (2) Contact the Code Enforcement Officer, if your municipality has one, and obtain a written opinion as to the quality of your work;
- (3) Contact the State Electrician's Licensing Board (207-624-8603) and arrange for an on-site inspection;¹¹
- (4) Contact other electricians and receive written estimates for any further necessary work.

§ 17. 8. Door-To-Door Sales

Remember, under Maine laws, you have specific protections against unscrupulous door-to-door contractors. See Chapter 13, Consumer Rights When a Salesperson Contacts You At Home. For example, all contracts must include a 3-day right to revoke (32 M.R.S.A. § 4662) and transient home

¹¹See *Brace v. Titcomb, et al.*, No. CIV.A. RE-00-038 (Me. Super Ct., May 17, 2002) (illegal electrical installation constitutes Unfair Trade Practice Act violation; damages and attorney fees ordered).

repair contractors must be registered with the State and any contract must include the State registration number (32 M.R.S.A. § 14506).

§ 17. 9. Required Home Construction Contract

Whenever possible, you should put your home repair contract in writing. If your home construction remodeling or repair project costs more than \$3,000¹² in labor or materials, then the Home Construction Act¹³ requires that your written contract have at least the following provisions:

- A. *Names of parties.* The name, address and phone number of both the home construction contractor and the homeowner or lessee;
- B. *Location.* The location of the property upon which the construction work is to be done;
- C. *Work dates.* Both the estimated date of commencement of work and the estimated date when the work will be substantially completed;
- D. *Contract price.* The total contract price, including all costs to be incurred in the proper performance of the work or, if the work is priced according to a “cost-plus” formula, the agreed-upon price and an estimate of the cost of labor and materials;
- E. *Payment.* The method of payment, with the initial down payment being limited to no more than one-third of the total contract price;
- F. *Description of the work.* A general description of the work and materials to be used;
- G. *Warranty.* A warranty statement which reads:

In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation. The warranty rights and remedies set forth in the Maine Uniform Commercial Code (U.C.C.) apply to this contract.¹⁴

¹² Effective September 13, 2003, this amount was increased from \$1,400.

¹³ 10 M.R.S.A. §§ 1486-90. This law has been in effect since August 4, 1988 and has been the subject of numerous Maine court decisions. *See e.g., VanVoorhees v. Dodge*, 679 A.2d 1077 (Me. 1996) (builder violated Home Construction Contracts Act and Unfair Trade Practices act; attorney fees of \$3,500 and damages of \$73,000); *William Mushero, Inc. v. Hull*, 667 A.2d 853 (Me. 1995) (violation of Home Construction Contracts Act and Unfair Trade Practices Act; damages and attorney fees awarded); *Dudley v. Wyler*, 647 A.2d 90 (Me. 1994)(even though Home Construction Contracts Act was violated, consumer denied relief because he had not suffered a loss of money or property); *Parker v. Ayre*, 612 A.2d 1283 (Me. 1992) (after violating Home Construction Contracts Act builder received damages only on basis of *quantum meruit*) .

¹⁴ The Maine Uniform Commercial Code warranty sections are found in Article 2, dealing with warranties and the sale of goods. Article 2 sets forth various remedies for breach of warranty. They are:

- A. Repair by the seller (i.e., the contractor)(11 M.R.S.A. § 2-314 to § 2-316);
- B. Damages for breach, including incidental and consequential damages if the owner is forced to make the repairs himself and goes to court to seek reimbursement (11 M.R.S.A. §§ 2-714, 2-715);
- C. Revocation of ownership if the defect is substantial and the seller is not able to adequately repair it (11 M.R.S.A. § 2-608).

By adding this “warranty rights and remedies” sentence at the end of the statutory express warranty, the Legislature is stating that the U.C.C. remedies available for breach of warranty would be the remedies homeowners could call on when seeking to find relief for breach of this construction warranty. In practical terms, this means that in seeking to enforce the statutory warranty in the home construction contract, the consumer should follow the remedy requirements set forth in the U.C.C. if it wishes to seek relief for breach of that statutory warranty. For example, if the defect is substantial and makes the house in effect uninhabitable then the consumer might wish to follow the revocation of ownership steps set forth in 11 M.R.S.A. § 2-608. Or, if the purchaser is suing for damages it should express its claim in

- H. *Resolution of disputes.* A statement allowing the parties the *option* of adopting a method of resolving contract disputes. At a minimum, this statement must provide the following information:

If a dispute arises concerning the provisions of this contract or the performance by the parties, then the parties agree to settle this dispute by jointly paying for one of the following (check only one):

- (1) Binding arbitration as regulated by the Maine Uniform Arbitration Act, with the parties agreeing to accept as final the arbitrator's decision (_____);
- (2) Nonbinding arbitration, with the parties free to not accept the arbitrator's decision and to seek satisfaction through other means, including a lawsuit (_____); or
- (3) Mediation, with the parties agreeing to enter into good faith negotiations through a neutral mediator in order to attempt to resolve their differences (_____).

The parties are not required to adopt any of these three choices.

- I. *Change orders.* A change order statement which reads:

Any alteration or deviation from the above contractual specifications that involves extra cost will be executed only upon the parties entering into a written change order.

- J. *Additional provisions.* The parties can add provisions that are in addition to the ones required by statute. If the contract is being used by contractors who sell door-to-door, it must meet the requirements of 32 M.R.S.A. §§ 4661-4671 (Consumer Solicitation Sales Act), 32 M.R.S.A. §§ 14701-14716 (Transient Sales Act) and 32 M.R.S.A. §§ 14501-14512 (Door to Door Home Repair Transient Sellers), including the three day right to revoke and the contractor's State registration number. If this contract includes installation of insulation in an existing residence, it must contain a detailed description of the insulation as required by 10 M.R.S.A. § 1482. If this contract includes construction of a new building or a new addition to an existing building, it must contain a statement that 10 M.R.S.A. §1411-1420 establishes minimum energy efficiency building standards for new resident construction, and whether the new building or addition will meet or exceed those standards. The contractor must also include a consumer protection addendum. See 10 M.R.S.A. §1487(13). This Addendum must also include a copy of the Maine Attorney General Home Construction Warning, which is featured on the Maine Attorney General's web page. Go to www.maine.gov/ag, click on Forms & Sample Documents, Home Construction Warranty.

The Parties to a home repair contract for more than \$3,000 may agree *not* to use this statutorily required contract,¹⁵ but only if the contractor first informs the homeowner of his written contract rights and the homeowner then agrees not to use the written contract required by statute. Violation of this statute requiring a home repair written contract can also be a violation of the Maine Unfair Trade

terms of the damages sections found at 11 M.R.S.A. § 2-714, 2-715. The U.C.C. statute of limitations requires suit within 4 years (11 M.R.S.A. § 2-725). However, the general statute of limitations for claims against a contractor is within 6 years after substantial completion (14 M.R.S.A. § 752).

¹⁵ 10 M.R.S.A. § 1489.

Practices Act (5 M.R.S.A. §§ 207, 213) and can result in the homeowner being awarded his attorney's fees if a dispute with the contractor goes to court.¹⁶ The Attorney General has available for the public a model contract for home construction work. See Chapter 18, Attorney General's Model Home Construction Contract.

§ 17. 10. Liens On Your Home

Any person who performs labor or furnishes material for repairing, renovating or constructing a building under a written or oral contract with the owner of the building may, with some limitations, place a lien on the building if the owner fails to pay for the labor or materials.¹⁷ The purpose of the lien is to secure payment of the bill and permit the lien holder, with court approval, to sell the building to pay off the bill. In some instances the lien can have priority over existing mortgages on the property. A lien is a very powerful remedy given to the contractor or materialman. It stays on the property until the debt is paid.

Liens and their enforcement are complicated and our discussion of this topic is simplified. If you have had a lien placed on your property we urge you to contact a private attorney for advice.

The lien process may be preserved and enforced in one of two ways:

- A. Recording a detailed notice of the lien in the local county Registry of Deeds within 90 days after the labor or supplying of materials has ceased and then commencing an action in the District or Superior Court in the same county within an additional 30 days.¹⁸
- B. Attaching the real estate and then commencing of suit in the Superior Court in the same county within 180 days after the labor or supplying of materials ceased.¹⁹

The lien may not be effective if these time constraints are not met. If the contractor's lien statement grossly misrepresents the facts the contractor may have committed the tort of abuse of process. See *Kleinschmidt v. Morrow*, 642 A.2d 161 (Me. 1994).

When a tenant or leaseholder of a building has contracted for a repair or renovation, or if the owner's general contractor is using subcontractors, the owner can prevent a lien by giving written notice to the tenant/lessee's contractor or the subcontractor working for the owner's general contractor that the owner will not be responsible for the cost of the repair or renovation.²⁰

A problem can arise when the owner of a building hires a general contractor to do work, and the general contractor utilizes a subcontractor for some of the labor or materials, and the general contractor doesn't pay the subcontractor. The subcontractor has the right to assert and enforce a lien on the owner's property. The subcontractor's lien is collectible only to the extent that the owner has not paid the general contractor. However, the owner's liability to the subcontractor can increase beyond that

¹⁶ 10 M.R.S.A. § 1490. See e.g., *Strouts v. Craig and MacIntosh*, No. CV-96-179 (Me. Super. Ct., Penob. Cty., April 28, 1998) (plaintiff is entitled to reasonable attorney fees directly attributed to plaintiff's enforcement of the Home Construction Contracts Act); *Gillespie v. Sparks*, No. CV-89-253 (Me. Super. Ct., Kenn. Cty., July 31, 1990) (consumer received attorney's fees of \$7,099); *Laclaire Electric, Inc. v. Lizotte, Anderson, and Anderson*, No. 95-CV-448 (Me. Dist. Ct. 3, S. Kenn., October 25, 1996) (MacMichael, J.) (consumers received \$2,099.50 in attorney fees); *Patricelli v. Gasch*, No. 94-CV-310 (Me. Dist. Ct. 3, S. Kenn., July 17, 1995) (even though consumer was not awarded damages, she received her costs as she successfully proved violation of Home Construction Contracts Act and was therefore the prevailing party); but see *Hebert v. Allen and East Coast Builders, Inc.*, No. CV-99-878 (Me. Super. Ct., Cumb. Cty., March 31, 2000) (no unfair trade practice violation due to lack of causation between improper home construction contract and complaint of faulty workmanship).

¹⁷ 10 M.R.S.A. § 3251. The amount of compensation to which a builder is entitled may be subject to deductions or setoffs in favor of the homeowner due to faulty or non-performance by the builder.

¹⁸ 10 M.R.S.A. § 3253, 3255.

¹⁹ 10 M.R.S.A. § 3262.

²⁰ 10 M.R.S.A. § 3252; see also the discussion of a "completion bond" in § 17.3.

limitation. This could happen if the subcontractor issues a warning to the owner, demanding payment and warning the owner that further payments to the general contractor without paying the subcontractor can result in the owner paying double payments. It becomes especially complicated if a subcontractor gives such a warning or asserts a lien. Then the owner will need to determine whether to pay the amount which is owed to the general contractor or pay it to the subcontractor, in order to be sure that the property is free from their asserted liens.

Once judgment is obtained by the person who placed the lien, he can enforce the lien by selling the property to receive payment.²¹ This drastic remedy can be halted if the owner pays the bill and all costs incurred before the property is sold. In addition, the owner is given a three-month time period after the sale to redeem the property by paying the judgment together with all costs and expenses of the sale.²² If the proceeds from the sale are more than the amount of the lien, the balance will be paid the owner; if the proceeds are insufficient to pay the lien, the court may order a personal judgment against the owner for the balance.²³

Liens are a serious business. If you think that a lien has been or is about to be placed on your property, you should promptly consult your own attorney.

§ 17.11. Home Equity Loans

A home equity loan is any loan in which you agree that your home will guarantee that you pay back the loan. When your home is the “collateral” for a loan, if you cannot make the monthly payments the lender can take your home to cover the cost of the loan. A home equity loan is a valid way to finance your needs. However, if you take out a home equity loan or second mortgage, you may risk losing your home. You could end up with a very high monthly payment. You may have to pay the entire loan back all at once. You may lose your home in a foreclosure.

Public Citizen, the Washington, D.C. non-profit organization which lobbies for strong consumer protection laws, has the following advice if you are thinking of taking out a home equity loan:

- A. **Do not trust everything you read or hear.** Be careful about big promises for easy loans. Do not trust everything you hear about a loan even if you hear it on the radio, see it on television, or get a letter in the mail. People who offer “help” may try to take advantage of you. They know that you need money and will make you pay to get it.
- B. **Do not deal with anyone who contacts you.** If someone knocks on your door and offers you a loan, they may be trying to take advantage of you. Even if they say they can fix up your house and take care of the payments, you should be very careful.²⁴
- C. **Do not trust home improvement people to get you a loan.** Be especially careful of home improvement contractors who offer to help you get a loan to fund their work.
- D. **Do not sign the loan on the first day that you hear about it.** Salesman will try to get you to sign the loan the same day that they give it to you. Do not be pressured into signing a loan on the same day. *Do not sign an agreement that you have not read or do not understand.*

²¹ 10 M.R.S.A. § 3269.

²² 10 M.R.S.A. § 3269.

²³ 10 M.R.S.A. § 3260.

²⁴ To better understand your rights when a salesperson comes to your home, see Chapter 13 in this Guide.

- E. **Do not sign forms with blank spaces.** Be sure that there are no blank spaces on any forms that you sign. A bad lender will fill in the blank spaces later. You may find you signed a contract for a loan with much higher rates and fees than you thought.
- F. **Do not try to roll all of your debt payments into one.** Be careful about “debt consolidation” plans. Consolidating debts, like credit card bills and car loans, with a loan backed by your home is not generally a good idea. You could lose your home this way.
- G. **Do not sign papers at home.** Do not do business in your home. You are comfortable, and it does not seem like you are doing business. Lenders can take advantage of you if you let your guard down.
- H. **Ask yourself if you really need a loan.** Remember a loan is not free money. It is always better to cover your expenses with money that you have, not money that you have to borrow. Do you have savings that will cover your needs? Remember, a loan might seem like free money but you always have to pay it later.
- I. **Shop for a good loan.** Do not rush into a loan. Make sure you get as much information as possible about what loans are available from as many different banks, credit unions and community development groups as possible. For a directory of community groups that may be able to help you, call the National Community Reinvestment Coalition (202) 986-7898.
- J. **Understand the loan.** If you decide to take out a loan, find out how it would work. Lenders are supposed to explain how loans work before they give them to you, but they do not always do so. Just because you think your monthly payments are a certain amount, or your annual percentage rate is certain amount, it may not be. You can be forced into paying what the lender said you owe, not what you thought you owed. If you have trouble reading any of the papers, seek help from an outside party.
- K. **Get a copy for yourself.** You need copies of everything that someone wants you to sign so you can take them home and read them before you sign them. You need a copy of all the forms for your records. If you ever have any trouble with the loan or your lender, these forms will help you.
- L. **Get legal advice.** Have your loan papers looked over by an attorney. Have a lawyer represent your interest at the closing of any large loan agreement. The lenders will have their own lawyer and you should have one too.
- M. **If you have been “taken” and entered into an unfair loan, take the following steps:**
 - (1) Get all of your papers together and organize them by date.
 - (2) Write down everything you can remember about the person who gave you the loan. Include a personal description, car, license plate, office location. Write down what happened to you and what you were told.
 - (3) Write down if there were any other people present when you took out the loan. Did the salesman work with anyone else? Was anyone in your family present? Were your co-workers or friends present?
 - (4) Get photographs of any work that the home repair contractor did to your house.

- (5) Get a good lawyer. You should also contact the Maine Office of Consumer Credit Regulation (1-800-332-8529). *See* Chapter 26 in this Guide.